


Staff Briefing Papers

Meeting Date	March 9, 2023	Agenda Item 1*
Company	Northern States Power Company d/b/a Xcel Energy (Xcel, Company)	
Docket No.	E-002/M-22-489	
	In the Matter of the Petition of Northern States Power Company for Approval to Sell 348 Acres of Land at Sherco	
Issues	Should Xcel Energy's request to sell 348 acres of land at Sherco be approved?	
Staff	Ashley Marcus	Ashley.Marcus@state.mn.us 651-201-2192

 Relevant Documents	Date
Xcel Energy – Initial Filing	September 1, 2022
Sherburne County - Letter	September 9, 2022
Department of Commerce – Comments	October 31, 2022
Xcel Energy – Reply Comments	November 14, 2022
Department of Commerce – Reply to Reply Comments	November 21, 2022
City of Becker – Comments	December 2, 2022
NCSRCC, IUOE Local 49, and LIUNA MN & ND – Reply Comments	February 15, 2023

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

I. Statement of the Issues

Should Xcel Energy's request to sell 348 acres of land at Sherco be approved?

II. Background

On September 1, 2022, Xcel Energy (Xcel, Company) filed a Petition for approval to sell 348 acres of land located at the Sherburne County Generating Station (Sherco) in Becker, MN to Elk River Technologies, LLC.

On October 31, 2022, The Minnesota Department of Commerce, Division of Energy Resources (Department) submitted Comments recommending approval of the filing with modifications except for Xcel's request for a variance.

On November 14, 2022, Xcel submitted Reply Comments in response to the Department's recommendations.

III. Parties' Comments

A. Xcel Energy – Initial Filing

Xcel stated this sale is a collaborative effort with Sherburne County to attract new development to the Becker area. The sale involves land that is no longer necessary as a buffer around the Sherco Plant and results in proceeds of approximately \$7,700,000 and a net gain of \$7,469,777 (\$5,435,727, Minnesota jurisdiction). Xcel's proposal is to refund these proceeds to customers.

Xcel requested the Commission:¹

- Approve the transaction according to the terms and conditions stated in the Option Agreement.
- Approve the proposed accounting treatment of the sales revenue from these transactions so the gains can be passed on to customers as a one-time bill credit.
- Grant a variance to Minn. R. 7825.1800, subpart B as it relates to the information required under Minn. R. 7825.1400, subparts F through I.

1. Description of Transaction

Elk River Technologies intends to use the land for data center development. If exercised, the terms of the option agreement between Xcel and Elk River Technologies include the following:

- In exchange for an escrow deposit of \$75,000, Xcel Energy granted Elk River Technologies an exclusive option and right to purchase approximately 348 acres of land in Becker, Minnesota for a purchase price of \$22,882 per acre (with the precise acreage

¹ Xcel Energy Initial Filing, Page 2.

to be determined once final design is complete and the Company has determined how much land needs to be maintained for electric infrastructure).

- Following execution of the Option Agreement, Elk River Technologies' option is good for six months, ending January 21, 2023 (Expiration Date). Elk River Technologies may also extend the option period for up to three additional six-month periods (expiring on July 21, 2023, January 21, 2024, and July 21, 2024, respectively). However, the Commission does not approve the Option Agreement prior to December 21, 2022, then the initial Expiration Date will be revised to be 30 days after receipt of Commission approval, and the six-month extended Expiration Dates will be adjusted accordingly.
- If it exercises the option, Elk River Technologies intends to develop the property for data center use and ancillary purposes. Upon closing, the Company may record a use restriction against the property that prohibits the property from being used for residential or retail purposes for a term of eight years.
- If Elk River Technologies exercises the option, the purchase and sale of the land must be closed within 30 days after the date on which the option is exercised.
- As more fully described in the Option Agreement, Elk River Technologies will be responsible for the full amount of any special assessments levied against the Property after the date of the Option Agreement.
- Aside from the specific representations and warranties made by Xcel Energy in the Option Agreement, Elk River Technologies, if it elects to exercise its option, agreed to take the property in its 'AS-IS' condition.

2. Standard of Review

This transaction is governed by Minn. Stat. § 216B.50 which states:

No public utility shall sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of \$100,000, or merge or consolidate with another public utility or transmission company operating in this state, without first being authorized so to do by the commission. Upon the filing of an application for the approval and consent of the commission, the commission shall investigate, with or without public hearing. The commission shall hold a public hearing, upon such notice as the commission may require. If the commission finds that the proposed action is consistent with the public interest, it shall give its consent and approval by order in writing. In reaching its determination, the commission shall take into consideration the reasonable value of the property, plant, or securities to be acquired or disposed of, or merged and consolidated.

Since Commission approval depends on a showing that the transaction is consistent with the public interest, the Company offered the following:

- The purchase price for the transaction is reasonable and well-supported by an independent appraisal.
- The significant net gains will go back to customers.

- The transaction will provide significant benefits to the Becker community and are part of an overall economic development effort by Xcel Energy and officials in the Sherburne County area.

Xcel also noted that Minn. Rule, part 7825.1800, subpart. B requires the Company to provide various detailed information (items A through J) set forth in Minn. Rule, part 7825.1400 for a transfer of property. Since items F through I are relevant to a capital structure filing and are required for investigating the issuance of securities, they do not apply in this instance; therefore, Xcel requested a variance of these filing requirements for purposes of this Petition.

3. Proposed Accounting Treatment for Sales Proceeds

Tables 1 and 2 show the estimated gain will be \$7,469,777 and the Minnesota share is \$5,435,727.

Table 1 - Approximate Net Gain from Sale²

Description	Amount
Expected Sales Proceeds	\$7,700,000
Book Value	(\$155,223)
Transaction Fees	(\$75,000)
Net Gain	\$7,469,777

Table 2 - Allocation Factors³

Jurisdiction	Amount	2021 Allocators
MN Allocation	\$5,435,727	72.77%
ND Allocation	\$392,925	5.26%
SD Allocation	\$421,953	5.65%
Total	\$6,250,605	83.68%

Xcel explained that FERC requires gains on the sale be included in account 421.1⁴ which is excluded from ratemaking and not required to be shared with utility customers; however, since the Company proposed refunding these gains to ratepayers, Xcel proposed to record this purchase in account 254⁵ until refunded.

² Xcel Energy Initial Filing, Page 8.

³ Xcel Energy Initial Filing at 132, Attachment C.

⁴ FERC account 421.1 is used to record gains on disposition of utility property.

⁵ FERC account 254 is used to record other regulatory liabilities.

B. Sherburne County – Letter

Sherburne County submitted a letter in support of Xcel's Petition because the land sale creates jobs, would attract new industries for additional tax base, and create new opportunities for adjacent land to be repurposed for business attraction efforts. This initiative would offset the impacts of the planned Sherco closure of Units #1 (2026), Unit #2 (2023), and Unit #3 (2030).

C. Department of Commerce – Comments

1. Legal

The Department noted that Minn. Rule, part 7825.1800, subpart. B requires the Company to provide detailed information (items A through J) set forth in Minn. Rule, part 7825.1400 for a transfer of property. Xcel requested a variance for item F – I and not for item J. The Department asked Xcel to clarify the discrepancy in Reply Comments and, once reviewed, will provide a recommendation regarding the variance request.

2. Accounting

The Department reviewed Xcel's net gain calculation and journal entries and did not identify any issues. The Department noted acreage size discrepancies between the Petition, appraisals, responses to Information Request (IR) No. 6, and the Sherburne County Geographic Information System (GIS). The Department requested a reconciliation of the differences in the parcel size in Reply Comments.

3. Financial/Policy

The Department developed an opportunity cost analysis to quantify costs to ratepayers. Three scenarios were considered:

- Scenario A – Elk River Technologies exercises its option to purchase the property on July 1, 2023.
- Scenario B – Elk River Technologies exercises its option to purchase the property on July 1, 2024.
- Scenario C – Elk River Technologies does not exercise its option to purchase the Property during the option period. Xcel manages to sell the property in July 2025 for the same price as Elk River Technologies agreed to in this proceeding.

The baseline alternative for each scenario:

- The Company marketed the 348-acre property via a competitive bid shortly after it received its first appraisal for the property on September 3, 2019, for \$5.1 million.
- Xcel's Minnesota ratepayers received a financial benefit of the transaction on July 1, 2020, equal to \$3,543,717.
- Ratepayers' annual discount rate for this financial calculation is 10%.

Table 3 - Scenarios A through C Net Benefit or Cost Associated with 348 Acre Land Sale⁶

Description	MN Ratepayer Opportunity Cost	Xcel Estimated Benefit	Net Benefit/(Cost)
Scenario A	\$ 4,716,687	\$ 5,435,727	\$ 719,040
Scenario B	\$ 5,188,356	\$ 5,435,727	\$ 247,371
Scenario C	\$ 5,707,192	\$ 5,735,727*	\$ 28,535

*This scenario includes nonrefundable option payments from Elk River Technologies of \$150,000 and \$150,000 from a third-party buyer in July 2025.

The Department noted the opportunity costs associated with waiting several years to identify a specific type of large customer to potentially occupy the site at some point in the future significantly decreases the financial benefits ratepayers receive from the sale.

The Department recommended approval of the current Petition but also recommended a competitive bid process for future land sales so the net gains can be returned to ratepayers as quickly as possible. The Department explained:⁷

This competitive bidding process could be standardized to lessen regulatory oversight. As for the City of Becker's and Sherburne County's involvement in the process, those two entities could manage the land use options associated with the parcels sold using competitive bidding via zoning requirements as is current practice.

This approach would allow Xcel the flexibility to incorporate the City of Becker's and Sherburne County's direct inputs to develop specific some number of the parcels while balancing the financial needs of Xcel ratepayers for financial relief.

4. Recommendations

The Department requested additional information about acreage discrepancies and the missing detail required as part of Minn. Rule 7825.1400 subpart J.

The Department recommended approval of the transaction according to the conditions stated in the Option Agreement and the proposed accounting treatment of the sales so the gain can be passed on to customers as a one-time bill credit. Additionally, the Department recommended a competitive bid process for future land parcels at Sherco.

D. Xcel Energy – Reply Comments

Xcel provided the information requested by the Department and requested that approval exclude the recommendation to conduct future land sales at Sherco through a competitive bidding process.

⁶ Department Comments, Table 2, and Attachment C

⁷ Department Comments, Page 10

1. Acreage Discrepancies

Xcel explained the parcel size discrepancies by stating:⁸

The gross area of the property is 348.30 acres. The 2019 and 2022 appraisals both reflect the correct gross area. There was a slight increase in the area encumbered by road right of way in the 2022 appraisal versus the 2019 appraisal, as the Company granted the City of Becker an additional easement for the construction of Energy Drive across the north side of the property in mid-September 2019. The property is part of a larger tax parcel with an area of approximately 472 acres.

An attachment was included with an aerial view of the property with markings identifying the Sherco site (348 acres) and the tax parcel (472 acres).

2. Minn. Rule 7825.1400 subpart J

In the Initial Filing, Xcel requested a variance for Minn. Rule 7825.1400 subparts F through I and inadvertently omitted subpart J. The Company confirmed it would like a variance to Minn. R. 7825.1800, subpart B as it relates to the information required under Minn. R. 7825.1400, subparts F through J.

3. Competitive Bid Process

Xcel disagreed with the Department's recommendation to develop a competitive bid process for future land parcels at Sherco. Xcel noted that its close coordination with the City of Becker and Sherburne County on the sale and is concerned that a competitive bid process has the risk of accepting a winning bid that is undesirable to the local community. Xcel believes a large power user will decrease bills of residents due to cost-sharing, so the Company seeks buyers that meet this requirement in addition to ensuring the land is used in the best way to meet the needs of the community. Additionally, Xcel noted a competitive bid process may result in a lower price due to the unique characteristics of the land and the extensive due diligence that would be required to determine other potential uses for the property.

E. Department of Commerce – Reply to Reply Comments

The Department recommended approval of the variance to Minn. R. 7825.1800, subpart B as it relates to information required under Minn. R. 7825.1400 subparts F through J.

The Department continued to recommend a competitive bid process for future Sherco land sales as a mechanism for lowering customer bills. Three years elapsed while Xcel found a qualified buyer and Elk River Technologies does not exercise their option to buy for another 18 months. The Department believes this process is too slow and a competitive bid process is an alternative means of returning sale proceeds to ratepayers as quickly as possible.

⁸ Xcel Reply Comments, Page 2

F. City of Becker – Comments

The City of Becker (Becker) submitted comments in support of Xcel’s Petition and opposed the Department’s recommendation to develop a competitive bid process for future Sherco land parcels. Becker outlined the following reasons for opposition:

- Regarding the long timeline for the property sale, Becker pointed out that, prior to 2022, there were no municipal utilities supplied to the property. In order to provide service, Becker is installing infrastructure in the Xcel surplus property and anticipates completion next summer. Additionally, the COVID pandemic occurred within the last three and a half years and had a very negative impact on economic development.
- Developing the Xcel surplus property is critical to help mitigate the enormous impacts of the loss of the Sherco plant – both in terms of employees and lost tax base.
- Selling the property strictly by competitive-bid process cannot guarantee that the sales would favor the ratepayers. Having a large, diversified base of electrical users should result in more efficient cost sharing, resulting in lower electric bills for everyone.
- Becker and Xcel have engaged in developing a master plan for this and preparing an Alternative Urban Area-wide Review (AUAR) for the Xcel buffer property. Together the AUAR and master plan provide an orderly, but flexible foundation and cohesive approach to future development initiatives that takes many considerations in account. Selling the property through a competitive bidding process would negate the entire planning effort.
- Becker supports the ratepayers receiving reimbursement commensurate with the sale of the property, but why does it have to occur immediately?

Becker believes Xcel, Sherburne County, and the City of Becker should continue to work together to develop the property to its highest and best use. Becker proposed a conditional approval. The two examples provided were no sale less than appraised value and Becker and Sherburne County support the sale, but Becker is open to other conditions that would benefit the local community.

G. The North Central States Regional Council of Carpenters (NCSRCC), International Union of Operating Engineers (IUOE) Local 49 and Laborers International Union of North America (LIUNA) MN & ND – Reply Comments

NCSRCC, IUOE Local 49, and LIUNA MN & ND submitted late-filed reply comments in support of Xcel’s Petition and opposed the Department’s recommendation to develop a competitive bid process for future Sherco land parcels. Members agree with Becker that a competitive bid process would negatively impact efforts to maximize economic development in the area and recommended more flexibility when balancing ratepayer interests and the needs of the local community.

IV. Staff Comments

Staff agrees with the Department's recommendation to approve the transaction according to the terms and condition stated in the Option Agreement, to approve the proposed accounting treatment so the gain can be passed on to customers as a one-time bill credit, and to grant Xcel's request for a variance.

Staff believes Xcel Energy, Sherburne County and the City of Becker should work together to develop a competitive bid process for future surplus land sales that will attract qualified buyers, shorten the sale process, and maximize the sale price. Utility bill relief should be a priority with increasing energy prices and this mechanism is an effort to speed ratepayer refunds while also encouraging a reasonable sale process.

Staff notes that, if Elk River Technologies exercises its option and the sales closes, the Commission may want to require Xcel to, within 60 days of completion of the sale, file the final journal entries that record these transactions. Also, if the transaction does close and Xcel issues refunds, the Commission may want to require Xcel to, within 60 days of completion of the refunds, make a compliance filing detailing how the refunds were distributed and when the refund process was completed. The Commission may want to delegate authority to the Executive Secretary to approve compliance filings in this proceeding.

V. Decision Options

Sale of 348 Acres Sherco Land

1. According to the terms and conditions stated in the Option Agreement, approve the sale of 348 acres located at the Sherburne County Generating Station to Elk River Technologies, LLC. (Xcel, DOC)
2. Approve Xcel's proposed accounting treatment of the sales revenue so the gains can be passed on to customers as a one-time bill credit. (Xcel, DOC)
3. Grant a variance to Minn. R. 7825.1800, subpart B as it relates to the information required under Minn. R. 7825.1400, subparts F through J. (Xcel, DOC)

Future Sherco Land Sales

4. Require Xcel to develop and employ a process whereby a significant majority of the future land parcels Xcel identifies as surplus at the Sherco Generating Station would be sold via a competitive bid process and the net gain from those sales returned to the ratepayers as quickly as possible. (DOC, Staff)

Compliance Filings

5. If Elk River Technologies, LLC exercises its option and the sales closes, require Xcel to, within 60 days of completion of the sale, file the final journal entries that recorded these transactions. (Staff)
6. If Elk River Technologies, LLC exercises its option and the sales closes then, within 60 days of the net gains being refunded, require Xcel to make a compliance filing detailing how and when the refund was completed. (Staff)
7. Delegate authority to the Executive Secretary to approve compliance filings in this proceeding. (Staff)